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Federal Communications Commission
Office of Secretary

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Amendment of Part 1 of the
Commission's Rules -- Competitive
Bidding Proceeding

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WT Docket No. 97-82

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nextel Communications, Inc. ("Nextel") opposes any debt relief for the C and F block Personal Communications Services ("PCS") broadband licensees.

The Federal Communications Commission ("Commission") has conducted spectrum auctions for PCS and other spectrum-based services in an exemplary manner, thereby creating high industry and investor confidence in the integrity and reliability of this licensing methodology. Their confidence would be shattered were the Commission to adopt the recent proposals of certain C and F block PCS licensees and MCI Telecommunications Corporation to suspend C and F block auction debt. Such action would disserve the public interest by irreconcilably undercutting the integrity of the Commission's competitive bidding processes and prejudicing the competitive positions of other wireless carriers.

When Congress authorized the Commission to award spectrum licenses by competitive bidding, it provided that small businesses, rural telephone companies and businesses owned by women and minorities be "given the opportunity" to participate in the auctions and provide spectrum-based services. In response thereto, the Commission set aside the C and F block PCS licenses for designated entities. It also adopted reduced downpayment requirements, provided bidding credits, and made available low-interest installment payment plans financed by the United States government. In adopting these provisions, the Commission more than fulfilled its statutory responsibilities. Moreover, the designated

entity provisions are an integral part of the "rules of the game" for licensing spectrum-based services and have influenced the decision-making of all auction participants for commercial wireless services, including narrowband PCS, 900 MHz Specialized Mobile Radio ("SMR"), as well as prospective participants in the forthcoming 800 MHz and 220 MHz SMR auctions.

The real problem here is that C block bidders paid two times what A and B block licensees paid for licenses encompassing more POPs. The bids of these C block "small businesses" inexplicably "eclipsed the total combined A- and B-block revenues . . . even though the players in [the A and B] auctions were the nation's largest telecommunications companies," illogically paying "twice as much for [licenses covering] 50 million less POPs." As a result, even before the C block auction closed, one analyst concluded that "when it comes time to ante up the payments, C-block licensees [] could turn out to be the biggest bust of the '90s."

Consistent with this prediction, the very licensees that placed irresponsible bids with no discernable basis in marketplace reality are now seeking forgiveness and rescue from their reckless actions. They propose deferral of their auction debts for up to five years as well as other concessions, even though all PCS licenses, including the C and F blocks, were expressly conditioned on "timely performance of the payment obligations." They support their requests for relief with anecdotal evidence that capital is unavailable; however, their claims do not withstand closer scrutiny. Contrary to their assertions, other spectrum licensees,

including Nextel, have obtained substantial financing since completion of the C block auction.

Stripped of their self-serving rationalizations, these proposals seek unwarranted "forgiveness" for irresponsible bidding that subsequently has failed to attract investment. Responsible applicants, such as Go Communications, recognized this bidding speculation and withdrew from the C block auctions assuming that under the rules, it would actually have to make installment payments on winning bids. The proposed debt deferral is inherently and inevitably unfair not only to other auction winners that have already paid their auction bids in full, but also to all participants and investors who relied on the Commission's rules in formulating their auction strategy and participation decisions.

The Commission has fulfilled its statutory obligations: it swiftly allocated the PCS spectrum, implemented PCS service and auction rules -- including provisions to overcome traditional obstacles to investment capital faced by designated entities -- and granted PCS licenses. The Commission is not obligated to rescue irresponsible bidders or guarantee their competitiveness or ultimate success. As one industry analyst recently concluded in evaluating the debt relief proposals: "the responsibility for the current problem rests squarely on the shoulders of the bidders themselves."

Accordingly, as Chairman Hundt has stated, the Commission should "go after" licensees who default on their auction payments, cancel their licenses and re-auction the affected spectrum.

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I. INTRODUCTION

Pursuant to the Public Notice of the Federal Communications Commission ("Commission") in the above-referenced docket,^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Comments regarding the potential suspension of installment payment plans for Personal Communications Services ("PCS") C and F Block licenses obtained at recent auctions.

The Commission released the Public Notice in response to a request from several C and F Block broadband PCS licensees to modify their license payment plans from quarterly to annual installments; a request from MCI Telecommunications Corporation ("MCI") to defer auction payments for C Block licensees for five years; and a proposal by Fortunet Communications, L.P. ("Fortunet") and other licensees, for a five-year suspension of interest payments, relaxation of the control group rules, and restrictions on transfer of C block licenses prior to expiration of the five-

^{1/} Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," DA 97-679, released June 2, 1997.

year holding period. The Public Notice also invites comment on a Petition for Rule Making ("Petition") by Cook Inlet Region, Inc. ("Cook Inlet") requesting initiation of a notice and comment rule making proceeding if the Commission intends to permit any changes in the C and F block licensee's debt structures.

Nextel is the Nation's largest provider of 800 MHz Specialized Mobile Radio ("SMR") services, including both traditional analog and enhanced wide-area digital services. Nextel is building out a nationwide all-digital wireless network to provide wide-area SMR services that compete with both PCS and cellular services. Nextel was a participant in the recently completed 900 MHz SMR spectrum auction and anticipates participating in the imminent 800 MHz SMR auctions.

Nextel opposes any debt deferral for the C and F block PCS licensees or for any licensee that obtained its licenses through competitive bidding. Such debt relief would irreconcilably undercut the integrity of the Commission's competitive bidding processes and prejudice the competitive positions of other wireless carriers. Stripped of their self-serving rationalizations, these requests seek unwarranted "forgiveness" of the irresponsible bids of many C block license winners -- bids which were not justified by the underlying economics of the potential service and now, not surprisingly, have failed to attract sufficient capital investment. Responsible applicants, such as GO Communications, recognized this bidding speculation and withdrew from the C block auctions. The funding problems at issue herein are the direct result of certain

bidder's naive and irresponsible conduct -- not any "dramatic" change in the availability of investment capital for commercial wireless systems -- as demonstrated by the success of numerous PCS and other wireless licensees in raising funds to cover both their licensing debts and system buildouts.^{2/}

Additionally, prior to the auction, C block participants were advised repeatedly by banks and investment advisors that financing would be adversely impacted if prices exceeded the A and B block auctions. The fact is that the financial markets have remained consistent; the C and F block winner's problems stem from their unwillingness to obtain equity investment at lower prices than their inflated auction costs. There are no persuasive legal, policy, economic or other reasons to defer the C and F block license debt, and the Commission should enforce its original terms and conditions.

II. THE PETITIONS

Several C and F block PCS licensees seek debt relief from the Commission by changing their debt payments from quarterly to annually.^{3/} They assert that the marketplace has changed significantly since completion of the C-block auctions, making it difficult to make both their license installment payments and

^{2/} See Section III(D), *infra*.

^{3/} See Letter from Thomas Gutierrez, Esq. et. al to Michele C. Farquhar, Esq., dated March 13, 1997 on behalf of Alpine PCS, Inc.; DCR PCS, Inc.; Eldorado Communications, L.L.C.; Indus, Inc.; KMTel, L.L.C.; Mercury PCS, L.L.C.; Miccom Associates; NextWave Communications, Inc.; and R&S PCS, Inc. (the "Alpine Letter").

implement their systems.^{4/} Other C block licenses complain that relief is necessary because the C-block spectrum "has been star-crossed from its inception."^{5/} They request a lengthy list of concessions including: (1) refunding their latest nearly \$4 million interest installment; (2) adjusting the installment interest rate to reflect the ten-year U.S Treasury obligation rate as of the date they were licensed;^{6/} (3) suspending interest payments for five years and extending the repayment term from 10 to 20 years; (4) eliminating the minimum equity requirements for C block control groups; (5) permitting C block license transfers to non-entrepreneurs within the five-year restricted period with only a 50 percent recapture of the designated entity bidding credit; and (6) permitting foreign equity investment of greater than 25 percent.

In its request, MCI proposes that the Commission defer all C block debt payments in the near-term and ramp them up in the final four years of the license term. MCI would also increase the allowable control of a single investor from the current 25%, while maintaining the control group's 50.1% interest. MCI seeks debt

^{4/} *Id.* at p. 2.

^{5/} Letter from James H. Barker to William F. Caton, dated May 1, 1997, on behalf of Fortunet Communications, L.P. ("Fortunet"), the successor to the following C and F block licensees: Fortunet Wireless Communications, L.P.; Aer Force Communications, L.P.; Southeast Wireless Communications, L.P.; New England Wireless Communications, L.P. and High Country Communications, L.P. ("the Fortunet Letter"). Hereinafter, Nextel refers to these licensees, and those named in the Alpine Letter, collectively, as "the PCS Licensees."

^{6/} Nextel does not oppose this adjustment.

relief on a case-by-case basis pursuant to the Commission's waiver authority.

On the other hand, Cook Inlet, a C block licensee who has made timely payments to the Commission, (a) opposes any such changes to the C and F Block financing requirements, and (b) asserts that such changes, if any, require a notice and comment rule making. Cook Inlet cites its own success as a C block licensee in bidding for and implementing PCS systems as illustrative that the anecdotal claims of the PCS Licensees do not justify auction debt suspension.

III. DISCUSSION

A. C and F Block Auction Debt Deferral Is Not Required by either OBRA '93 or the Commission's Rules

In the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93"),^{7/} Congress established the Commission's auction authority and provided that small businesses, rural telephone companies and businesses owned by members of minority groups and women have opportunities to participate in providing spectrum-based communications services licensed through competitive bidding.^{8/} OBRA '93 directed the Commission to design competitive bidding systems that would provide "economic opportunities" for these

^{7/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002, 107 Stat. 312 (1993) ("OBRA 93").

^{8/} Section 309(j)(4)(D) requires the Commission to:

"ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures. . ."

entities to obtain licenses and thereby participate in providing such services.^{9/}

The Commission created the C and F PCS block licenses in response to this directive, going beyond Congressional dictates by limiting eligibility to specified "designated entities."^{10/} Additionally, the Commission established special bid payment arrangements, including reduced down payments, installment payments, and low-interest financing to assure that the designated entities had sufficient access to capital to participate in the auctions.^{11/} The Commission's efforts were successful and achieved Congress' intent as C and F block licenses were awarded to numerous new small business entrepreneurs and other designated entities.

In adopting the PCS auction design, including the C and F blocks, the Commission emphasized that it would be "critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they . . . default on a balance due."^{12/} The Commission conditioned C and F block licenses "upon the full

^{9/} Section 309(j)(4)(C)(ii).

^{10/} 47 C.F.R. Section 24.709 *et seq.*

^{11/} Each of these special provisions was intended to push debt payments into the future, allowing designated entities to make lower auction debt payments during the company's start-up phase. See Fifth Report and Order, 9 FCC Rcd 5532 (1994) ("Fifth R&O") at para. 140.

^{12/} Second Report and Order, 9 FCC Rcd 2348 (1994) at para. 197 (hereinafter "Second R&O").

and timely performance of [their] payment obligations" and expressly stated that failure to make an installment payment within 90 days of the due date could result in cancellation of the license.^{13/} Neither OBRA '93 nor the Commission's Rules guaranteed a licensee's success in the marketplace -- either as to systems buildout, service initiation or long-term staying power. As Cook Inlet points out in its Petition, the Commission's rules were not intended to assist:

"certain entities [who] placed irresponsible bids . . . and now seek to transfer the burden of their choices to the Commission."^{14/}

OBRA '93 did not mandate a "competitive marketplace" wherein some "competitors" can seek federal debt relief anytime they run into financial difficulty. Nor did Congress intend an "evolutionary" financing program for C and F block licensees or an

^{13/} Second R&O at para. 240. The Commission did provide for a three to six-month time period during which it could evaluate requests for debt restructuring. *Id.* Those evaluations, the Commission stated, would include consideration of the licensee's payment history, how far into the license term the default occurs, "the reasons for the default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under a distress sale policy." *Id.*

In these cases, the licensees are less than one year into their licenses terms and the reason for their defaults is their own ill-advised over-bidding. These factors support cancellation and re-auction -- particularly when viewed in light of Chairman Hundt's statement that "the FCC would 'go after' any PCS C-block bidders that walk away from high bids because of an inability to pay final auction prices. He said the FCC plan involves reauctioning any licenses on which a high bidder defaults, and seeking from the defaulted bidder the difference between the lower final sale price and the original bid." Radio Communications Report, "Big Names Drop Out of C-block Auction," April 1, 1996, at p. 26.

^{14/} Cook Inlet Petition at p. 6.

insurance policy of success in the capital markets. On the contrary, as the Commission itself stated,^{15/} its programs were designed only to "enhance the ability" of designated entities to succeed by improving their often limited access to capital. These rules were expressly not intended to encourage "very high bids, which could reduce competition and promote defaults among entrepreneurs" or to "encourage speculation instead of legitimate applicants who can attract capital."^{16/}

B. Auction Debt Deferral Would Undermine the Integrity and Fairness of the Commission's Competitive Bidding Process

When the Commission established auction rules, including its designated entity financing provisions, it provided potential bidders notice of the parameters within which they should plan their bidding strategies. With regard to the C and F block bidders, the rules enabled them to create bidding entities designed to fit the Commission's specified programs and plan their business and bidding strategies accordingly.

Similarly, bidders in other Commission auctions, e.g., 900 MHz SMR and other PCS auctions, relied (and continue to rely) on the Commission's rules in developing their bidding and long-term business strategies. Based on those rules, bidders carefully placed bids on particular licenses in particular markets. For example, in the recent 900 MHz SMR auctions, Nextel based its

^{15/} Fifth Memorandum Opinion and Order, 10 FCC Rcd 402 (1994) at para. 103 (hereinafter "Fifth MO&O").

^{16/} *Id.* at para. 104.

bidding strategy, in part, on the knowledge that it would have to make full payment soon after the auction ended. In the C block auction, Go Communications, for example, withdrew based on the knowledge that it would have to meet the Commission's payment requirements as established in its rules.

Thus, a change in the rules now not only runs counter to the intentions of Congress to provide designated entity "opportunities," but also undermines the integrity of the Commission's rules for all other companies who obtained their licenses at auction. For those licensees and future licensees, reliance on the rules as written could prove to be a bad business decision if the Commission is willing to change them for those who cannot survive within their parameters. Undermining the integrity of the auction rules would create additional uncertainties for potential investors who must make their investment decisions based on, among other things, the Commission's bid payment obligations. Such uncertainties would make it more difficult for all spectrum-based providers to raise needed capital.

Once the Commission had established these rules, all interested parties -- including those now seeking auction debt relief -- had the opportunity to seek reconsideration of the designated entity provisions if they believed them inadequate. Yet, none of the entities now seeking relief sought reconsideration of any facet of the Commission's broadband PCS auction rules.^{17/}

^{17/} According to Appendix A to the Commission's Fifth MO&O, there was no Petition for Reconsideration filed by MCI, Alpine PCS, (continued...)

When the rules were crafted, each of these potential applicants agreed with the established procedures and structured their business plans accordingly.

As a former prospective PCS auction participant itself, Nextel is aware that investors and investment advisors consistently advised prospective C block participants -- including some of the applicants herein -- that obtaining financing would be difficult, if not impossible, if prices became higher than those of the A and B block PCS auctions. Despite this, some bidders made economically irresponsible bids and now demand "corporate welfare" from the federal taxpayer. This kind of regulatory interference in the wireless capital marketplace, however, would only increase financial and investment uncertainties, which could, in turn, result in further uneasiness on Wall Street and more fragile financing opportunities for all wireless providers.

Moreover, the Commission's special auction payment provisions for designated entities are only a single component of the overall competitive bidding program. Adopting these provisions for C and F block designated entities impacted the valuations of all PCS spectrum and was a factor considered by potential bidders in determining their bidding strategies and alliances, by bidders (e.g., Go Communications and US Airwaves) withdrawing from the

17/(...continued)

ElDorado Communications, L.L.C., KMTel, L.L.C., Mercury PCS, L.L.C., MICCOM Associates, DCR PCS, Inc., INDUS, Inc., Nextwave Communications, Inc., R&S PCS, Inc., Fortunet Communications, L.P.; Aer Force Communications, L.P.; Southeast Wireless Communications, L.P.; New England Wireless Communications, L.P. or High Country Communications, L.P.

auction, and by potential investors in evaluating alternative PCS plays. The debt suspension proposals would significantly "change the rules" in the middle of the game to the detriment of other CMRS bidders and licensees, as well as to the detriment of those spectrum licensees who have fulfilled their payment obligations.

The Commission should preserve the integrity of its auction rules and processes by enforcing them, rather than permitting wholesale changes to rescue a handful of PCS licensees who chose to make uneconomic bids with no basis in marketplace reality. The Commission is authorized -- and justified -- to keep the down payments, re-auction defaulter's spectrum and hold defaulters liable for any lost proceeds in a re-auction. The financial risk of auctioned licenses was one that Congress specifically stated should be borne by the "financial underwriters" rather than the Commission.^{18/}

C. Each C and F Block Licensee Was Aware of the Parameters of Their Special Financial Provisions and The Risks of the Marketplace

Each C and F Block PCS license winner, including those now seeking relief, was well aware of the Commission's financing structure. Each entered into competitive bidding for the C and F block licenses knowing the extent of the federal government's financing concessions for designated entities, and each was aware that its license would be conditioned on timely payment -- within the 90 day grace period -- and that failure to comply would result in license forfeiture. The Commission often conditions spectrum

^{18/} H.R. Rep. No. 213, 103d Cong., 1st Sess. (1993) at 483.

licenses;^{19/} the C and F block licensees should be held to the conditions under which they accepted their authorizations.

The Fortunet Letter offers the novel assertion that C Block spectrum licensing has been "star-crossed" from the beginning and its licensees therefore deserving of special consideration.^{20/} This is nonsense. The C block auctions **began** only three years after reallocation of the 2 GHz band for PCS and only 18 months after the Commission's expeditious adoption of PCS licensing and service rules.^{21/} C block MTA licenses were granted to winners within four months after conclusion of the auction -- enabling licensees to move quickly to construct their systems.

In stark contrast, the Commission's freeze on 800 MHz SMR license applications is approaching its third anniversary.^{22/} The rule making to transition from site-by-site to geographic area 800 MHz licensing and initiate auctions for such licenses has been pending for over 18 months.^{23/} As a result, 800 MHz SMRs -- which the Commission expects to directly compete with PCS and

^{19/} See, e.g., 47 C.F.R. Sections 22.947 (five-year construction condition on cellular licenses); 24.203 (construction requirements as a condition of broadband PCS licenses); 24.237 (interference protection condition on broadband PCS licenses); and 90.167 (commencement of service condition on certain SMR licenses).

^{20/} Fortunet Letter at p. 2.

^{21/} See Memorandum Opinion and Order, 9 FCC Rcd 4957 (1994), adopting final PCS service rules on reconsideration.

^{22/} Third Report and Order, 9 FCC Rcd 7988 (1994) at para. 108.

^{23/} First Report and Order, Eighth Report and Order, and Second Further Notice Of Proposed Rule Making, 11 FCC Rcd 1463 (1995).

cellular providers^{24/} -- have yet to receive the regulatory parity with competing CMRS providers promised by OBRA '93, and have been forced to continue operating in not only an antiquated licensing environment, but one that has been suspended for nearly three years. SMR licensees, therefore, face not only the same marketplace challenges as C and F block PCS licensees, but they also must contend with the Commission's continued inability to provide the OBRA '93-mandated regulatory parity.^{25/} The assertion that C block PCS licensees have experienced singularly difficult or inequitable regulation does not withstand scrutiny and offers no support for debt suspension.^{26/}

^{24/} See, e.g., Third Report and Order, *supra*. at fn. 23, at paras. 73, 77; In the Matter of Applications of Motorola, Inc. For Consent to Assign 800 MHz SMR Licenses to Nextel Communications, Inc., 10 FCC Rcd 7783 (1995) at para. 18; In the Matter of Applications of Dial Page, Inc. For Consent To Transfer Control of Dial Call, Inc. SMR and Business Radio Licenses to Nextel Communications, Inc., DA 95-2379, released November 22, 1995, at paras. 24-25; and In the Matter of Applications of Nextel Communications, Inc. For Transfer of Control of OneComm Corp., N.A. and C-Call Corp., 10 FCC Rcd 10450 (1995) at para. 31.

^{25/} Congress mandated in OBRA 93 that regulatory parity be implemented by August 10, 1994. See OBRA '93 at Section 6002(d)(3).

^{26/} The fact that C-block licensees were licensed within four years of the spectrum's reallocation and 18 months of the adoption of service rules -- despite variables outside the Commission's control, e.g., the Supreme Court's *Adarand* decision -- only highlights the Commission's expeditious and phenomenal efforts in licensing the PCS C block. In contrast, 900 MHz SMR licensees, also expected to compete with PCS and cellular, awaited Commission action on service and auction rules for nearly ten years. First allocated in 1986, the Commission finally auctioned the overwhelming majority of 900 MHz SMR spectrum just last year -- an auction in which full and timely payments were made by all bidders, including Nextel.

Additionally, the C Block licensees -- like all other industry participants -- were well aware of the risks involved in entering the increasingly competitive CMRS marketplace.^{27/} They were aware that Congress was considering a groundbreaking piece of legislation that would overhaul the entire telecommunications industry.^{28/} They were aware that the Commission had already auctioned A and B Block PCS licenses and that numerous sources of financing were tapped for those companies.^{29/} In fact, the Commission expressly pointed out to potential bidders the "fierce" competition that would develop in CMRS markets, stating that the top 50 Basic Trading Areas ("BTAs") will be:

the most competitive wireless communications markets in the country and will require inordinately large amounts of capital. It will be extremely challenging for any entrepreneur's block participant to compete in these markets. Installment plans will greatly enhance the ability of all entrepreneurs' block participants to raise capital to succeed. . .^{30/}

Thus, there is no economically valid reason to grant any of the proposals for debt relief. The C and F block financing terms were clear, and the licensees signed promissory notes. The fact

^{27/} The Fortunet Letter cites to "factors beyond [their] control." Fortunet Letter at p. 2. Most companies operating in our economy refer to those "factors" as "risks" and account for them accordingly -- in hopes of realizing a return on taking those risks.

^{28/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

^{29/} Incredibly, MCI uses this factor as a justification for postponing C block debt payments, as if the funding for A and B block licensees was an unexpected occurrence. See MCI Letter at p. 2.

^{30/} Fifth R&O at para. 103 (emphasis added).

that some entrepreneurs may not succeed does not require that the Commission attempt to rescue them.

D. The PCS Licensees' and MCI's Requests are Based on Unsupported Anecdotal Assertions

The PCS Licensees assert that changed circumstances in the financial markets necessitate auction payment debt suspension. They state, for example, that the "financial and regulatory climates . . . have changed dramatically";^{31/} that "the financial outlook for wireless companies has changed dramatically";^{32/} and they cite to "the inherent volatility and seasonal nature of the capital markets."^{33/}

These arguments do not withstand scrutiny and are disingenuous.^{34/} Rather than supporting their pleas for further government-assisted financing, the assertions lay bare the applicants' flawed assumptions about valuations and capital availability and their bidding mistakes. In many markets, C block licensees paid **two times** what A and B block licensees paid for

^{31/} Fortunet Letter at p. 2.

^{32/} MCI Letter at p. 1.

^{33/} Alpine Letter at p. 3.

^{34/} MCI's proposal is particularly troubling. It proposes deferring all auction payments for four years, thus creating a significant -- and unacceptable -- financial risk for the federal government. It suggests that it will not make further investments in any C or F block licensee without debt restructuring. Nextel respectfully suggests that this is attempted regulatory blackmail by a well-financed company that opted not to participate in the PCS auctions and is seeking instead a "bargain basement" PCS play.

licenses that encompassed more POPs.^{35/} Two months before the auction even closed, the C-block auction

"eclipsed the total combined A- and B-block revenues of \$7 billion, even though the players in [the A and B-block] auctions were the nation's largest telecommunications entities."^{36/}

As a result of these speculative bids, investors warned that they would likely be leery of C block players in light of the significantly higher prices they paid than were paid for the larger A and B block PCS licenses. As one analyst concluded: "It doesn't seem logical that someone would pay twice as much for 50 million less POPs."^{37/} Similarly, a March 1996 analysis warned:

"The number of bidders participating in the C-block broadband personal communications service auction who are flying by the seat of their pants is staggering. The thought of committing millions of dollars to build a network that is expected to directly compete with numerous established wireline and wireless carriers has given even some of the most seasoned players pause. And when it comes time to ante up the payments, C-block licensees also could turn out to be the biggest bust of the '90s."^{38/}

The excessive, out-of-control C block bidding prompted responsible bidders, such as GO Communications and US Airwaves to

^{35/} Wireless Week, "Analysts Evaluate C-Block Auction," May 6, 1996 at p. 10.

^{36/} RCR, "C-block Spectrum Speculation Runs High," March 11, 1996 at p. 16.

^{37/} Wireless Week, "Winners Chase Capital," May 20, 1996 at pp. 20 -21.

^{38/} RCR, "C-block Spectrum Speculation Runs High," March 11, 1996, at p. 1.

drop out of the C block auction.^{39/} If PCS C and F block licensees are unable to attract the capital necessary to build out their systems and meet the installment payments for their licenses, then perhaps they paid too much for their licenses, targeted markets which investors believe cannot support additional entrants, or are proposing services that are not sufficiently differentiated or innovative to pique financial interest.

Thus, in a June 16, 1997 evaluation of the debt relief applications, John Benshe of Lehman Brothers concludes:

"We think the responsibility for the current problem rests squarely on the shoulders of the bidders themselves. We have heard investors say that what the more aggressive C block bidders were really doing was buying an option on the business plan which would go deeply in the money if they could find the financing to build it out and then operate it. The return profile of the option was to make a lot, or lose it all. Now faced with losing it all, these players are seeking relief . . ."^{40/}

The baselessness of the PCS Licensees' complaints about overall capital availability is further demonstrated by the continuing ability of other wireless providers to obtain financing. Despite MCI's claim of "withered" funding sources, Sprint Spectrum, Western Wireless, InterCel and Sprint PCS have successfully obtained various combination of equity, debt and vendor financing to finance PCS license purchases and to buildout their systems.

^{39/} In February 1996, US Airwaves dropped out stating that the "prices in the markets where US Airwaves was bidding reached a level we determined was unacceptable, given our operating experience and business strategy." RCR, "PCS Stakes Get Too Rich For Some C-block Bidders," February 26, 1996 at p. 1.

^{40/} "Bensche-Marks" Vol. 97-10, Lehman Bros. Equity Research Wireless Services, June 16, 1997.

Omnipoint, a designated entity, has also completed a successful Initial Public Offering as well as debt and vendor financing to enable its participation in the A/B, C, D, E and F PCS block auctions.

Similarly, Nextel has continued to attract the necessary financing to construct and operate its nationwide digital wireless telecommunications network -- despite enduring a nearly three-year license application freeze and ongoing regulatory paralysis. Since going public in 1992, Nextel has raised and invested billions of dollars to finance its advanced digital network, including obtaining an additional \$3.5 billion in financial commitments since September 1996 (post C block auctions) -- \$1.5 billion of it in the past three months. Cook Inlet points to similar financing successes in funding its C block systems and advises the Commission to develop a complete record before granting any debt deferral for C and F block licensees.41/

As these examples demonstrate, capital availability for wireless ventures has neither "withered" nor "changed dramatically." On the contrary, any company with a reasonable business plan and credible management has the opportunity to raise money in the current market. The problem the complainants face is their unwillingness to sell equity at lower prices than their auction debt commitments.

41/ Petition of Cook Inlet at p. 6.

E. A Notice and Comment Rule Making is Necessary to Adopt Any of the Designated Entity Auction Debt Relief Proposals

1. The Requests of the PCS Licensees and MCI Do Not Meet the Commission's Waiver Requirements

Section 24.819 of the Commission's Rules and Regulations permits waiver of the PCS rules upon a showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicant must also show lack of a reasonable alternative.^{42/}

The PCS Licensees and MCI fail to make either of the above showings. First, given the large number of PCS licensees seeking relief, it cannot be claimed that the waiver is being sought for a "particular case." Moreover, it cannot be said that the application of the rule to these parties would "frustrate" the purpose of the rule in any "particular case." The purpose of the 90-day grace period and the payment obligations is to ensure that the Commission's auction process are not abused by speculators.^{43/} The purpose of the rule is to recover licenses from those parties who are unable to fulfill their obligations thereunder and ensure that the license is in the hands of a party who will use the spectrum most efficiently and effectively.

^{42/} 47 C.F.R. Section 24.819 (emphasis added).

^{43/} See Fifth MO&O at para. 104.

Contrary to the above requirements, waiving the payment obligations would frustrate the purpose of the rule and "encourage speculation instead of legitimate applicants who can attract capital."44/

Second, neither the PCS Licensees nor MCI have presented any "unique facts or circumstances" to set them apart from any other PCS, cellular or SMR licensees. All wireless companies are facing enormous buildout and implementation costs; all face significant licensing costs; all potential bidders are presented similar marketplace realities, and all are required to prepare a business strategy that incorporates the potential risks of an increasingly competitive wireless marketplace. Moreover, MCI recognizes that its list of "hurdles" are being faced by not only C Block PCS licensees, but by cellular and other PCS licensees, whether A, B, D, E, or F Block licensees.45/

Thus, there is nothing "unique" about the set of circumstances currently inhibiting C Block licensees' auction debt payments warranting extraordinary waiver relief. Nonetheless, it is only the C and F block licensees asking the Commission to change its financing rules. The Commission has, in fact, previously enforced its licensing rules by cancelling some licenses for failure to make timely payments, and has re-auctioned them. There is no justification for treating these particular licensees any differently.

44/ *Id.*

45/ MCI Letter at p. 1.